

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re Clearview AI, Inc. Consumer
Privacy Litigation

Civil Action File No.: 1:21-cv-00135 Judge
Sharon Johnson Coleman
Magistrate Judge Maria Valdez

**MOTION FOR LEAVE TO FILE BRIEF OF AMICI
FIRST AMENDMENT CLINIC AT DUKE LAW AND
PROFESSORS OF LAW EUGENE VOLOKH AND JANE BAMBAUER
IN SUPPORT OF DEFENDANT’S OPPOSITION TO
PLAINTIFFS’ MOTION FOR A PRELIMINARY INJUNCTION**

Pursuant to Local Rule 56, proposed amicus curiae seek leave to file an amicus brief in this matter. Proposed amici the First Amendment Clinic at Duke Law and Professors of Law Eugene Volokh, of the University of California Los Angeles, and Jane Bambauer, of the University of Arizona, respectfully request that this Court grant them leave to file the attached amicus brief (Exhibit 1) in opposition to Plaintiffs’ motion for a preliminary injunction. In support, amici submit their proposed brief and state as follows.

1. Amicus curiae briefs may be filed in federal district courts. As there is no Federal Rule of Civil Procedure that specifically applies to the filing Amicus Curiae briefs in a district court, district courts have discretion as to whether to grant or deny such leave, and they may look for guidance to Rule 29 of the Federal Rules of Appellate Procedure. *See Am. Humanist Ass’n v. Md. Nat’l Capital Par & Planning Com’n*, 303 F.R.D. 266, 269 (D. Md. 2014). District courts have inherent authority to allow amici to participate in briefing. *See, e.g., NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005).

2. Amicus Duke Law First Amendment Clinic teaches law students how to protect

and advance the freedoms of speech, press, assembly, and petition by allowing state-certified students to perform supervised legal work both in Court and through public commentary. The Clinic and its student attorneys have a particular interest in protecting the corollary right to gather, access, and use publicly available information, as it stems directly from the constitutional guarantees of the First Amendment.

3. Amicus Professor Eugene Volokh is a Professor of Law at the UCLA School of Law and a former computer programmer. Professor Volokh has authored over ninety law review articles and books concerning the First Amendment. His law review articles have been cited by opinions in eight Supreme Court cases and several hundred court opinions. He is a frequent speaker on topics including the intersection between the First Amendment and technology, and he has an interest in protecting the proper application of free speech principles in this context.

4. Amicus Professor Jane Bambauer is a Professor of Law at the University of Arizona. Professor Bambauer's research assesses the social costs and benefits of Big Data, and she explores the intersection between the First Amendment and information privacy law. Amicus has written nineteen scholarly articles, presented on numerous panels, and been quoted frequently in news articles on these topics. Amicus is interested in protecting the balance between legitimate privacy interests and the collection of publicly available information.

5. Amici's proposed amicus brief will offer this Court valuable insight into the important issues implicated by Plaintiffs' motion for a preliminary injunction and will assist in its resolution. Specifically, the proposed amicus brief addresses the increasingly blurred line between conduct and speech in the First Amendment context, and how restrictions on the gathering and use of information indirectly burden speech. Amici support Clearview's First Amendment defense to Plaintiffs' unconstitutional application of the Illinois Biometric Information Privacy Act (BIPA).

6. Defendant consents to this motion for leave. Plaintiffs take no position on this motion.

WHEREFORE, the proposed amici respectfully request that the Court enter an order permitting them leave to file an amicus brief in this action.

Dated: April 28, 2021

/s/ Rachel S. Morse

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CERTIFICATE OF SERVICE

The undersigned counsel certifies that on April 28, 2021, the foregoing was filed via the court's electronic case filing system, which shall cause a copy to be served on all counsel of record via email.

/s/ Rachel S. Morse
Rachel S. Morse